REMARKS / ARGUMENTS

Claims 1-80 are currently pending in this case. The independent claims of this application are claims 1 and 42. All other claims are dependent thereon. Claims indicated as "original" above represent the text of the claims as they appeared upon entry into the National Phase in the United States, in accordance with the US Patent Office's Pre-OG Notice entitled "Amendments in a Revised Format Now Permitted" dated January 31, 2003. Amendments made prior to or concurrent with entry into US National Phase, such as by amendment during the PCT international phase after International Preliminary Examination (as indicated in the "Amended Sheets" or by a preliminary amendment are not reflected in this "original" designation.

In the official action of March 25, 2003, the examiner set forth a 5-way restriction requirement. This restriction requirement ignores the elements set forth in both claims 1 and 42, which are elements in all other claims. The Examiner's groupings may reflect and improper analysis of the claims, and may be based on a review of the claims as they existed prior to amendment during the PCT international phase.

Applicant's believe that this restriction requirement is improper and is accordingly traversed. For the examiner's benefit, applicant's have included a complete set of pending claims.

This application is a US National Phase of a PCT Application filed under 35 USC 371. Accordingly, PCT "Unity of Invention" practice applies, and not US restriction practice. MPEP Sect. 1893.03(d) states "examiners are reminded that unity of invention (not restriction) practice is applicable in international applications (both Chapter I and II) and in national stage (filed under 35 USC 371) applications.

According to 37 CFR 1.475, the provision governing Unity of Invention in the national phase,

> *"An international or national stage application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept ('requirement of unity of invention"). Where a group of inventions is claimed in an application, the requirement of unity of invention shall be fulfilled only when there is a technical relationship among those inventions*

involving one or more of the same or corresponding special technical features. The expression "special technical features" shall mean those features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art.

37 CFR 1.475(b) states that

(b)An international or a national stage application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn only to one of the following combinations of categories:...

(5) A product, a process specifically adapted for the manufacture of the said product, and an apparatus or means specifically designed for carrying out the said process.

MPEP Sect 1893.03(d) provides guidance on making this determination:

"A process is "specifically adapted" for the manufacture of the product if the claimed process inherently produces the claimed product with the technical relationship being presented between the claimed process and the claimed product. The expression "specifically adapted" does not imply that the product could not also be manufactured by a different process.

An apparatus or mean is specifically designed for carrying out the process when the apparatus or means is suitable for carrying out the process with the technical relationship being present between the claimed apparatus or means and the claimed process. The expression specifically does not imply that the apparatus or means could not be used for carrying out another process, nor does it imply that the process could not be carried out using an alternative apparatus or means. "

As indicated above, Claims 1 and 42 are the only independent claims presented. Claims 79 and 80 are product claims manufactured by the method of claim 1, which are written in dependent form. Claim 1 recites:

1. (Original) A method of loading a container with a defined quantity of product which comprises:
a) closing off a perforation in a perforated plate;
b) directing powder into said closed-off perforation by the action of a first leveller blade moveable on a sweeping path relative to the perforated plate; and
c) transferring the contents of the perforation to said container.

wherein the first leveller blade is spaced from the perforated plate and presents a forward acute angle to the sweeping path.

Claim 42 shares the same special technical features as claim 1. Claim 42 recites:

42. (Original) An apparatus for loading a container with a defined quantity of product, which comprises:

a) a perforated plate;
b) a closure for reversibly closing off a perforation in the perforated plate;
c) a director for directing powder into said perforation; said director comprising a first leveller blade moveable on a sweeping path relative to the perforated plate; and
d) a transferor for transferring the contents of the perforation to said container.

wherein the first leveller blade is spaced from the perforated plate and presents a forward acute angle to the sweeping path.

As can be seen, the common elements defining the technical feature of these claims include, as written: a perforated plate that can be closed-off, a powder leveller blade wherein the leveller blade is spaced from the perforated plate and presents a forward acute angle to the sweeping path, and a transfer step or apparatus for removing the powder from the perforation. Claims 79 and 80 relate to specific products obtained by the method of claim 1.

As these separate categories of invention (method/process, apparatus and product) relate to the same special technical feature, unity of invention is clearly present, and such a withdrawal of the restriction is appropriate under the above referenced CFR and MPEP sections. This outcome is also supported by the MPEP sections relating to unity of invention during international preliminary search. MPEP Section 1850 A states,

"If the independent claims avoid the prior art and satisfy the requirement of unity of invention, no problem of lack of unity arises in respect to any of the claims that depend on the independent claims. In particular, it does not matter if a dependent claim itself contains a further limitation... "

In the instant case, it is asserted that independent claims do indeed avoid the prior art of record, and comply with the unity of invention requirement.

In the telephone discussion with the Examiner which applicants' attorney had on April 17, 2003, the Examiner stated that under US practice the product claims of Group V, claims 79 and 80 may, under US practice be interpreted to cover any product regardless of the manner in which it was made. This finding seems irrelevant to the determination of whether the claimed products relate to the single group of

inventions. This situation appears to be contemplated in MPEP Sect 1893.03(d) wherein the statement is made:

> *"A process is "specifically adapted" for the manufacture of the product if the claimed process inherently produces the claimed product with the technical relationship being presented between the claimed process and the claimed product. The expression "specifically adapted" does not imply that the product could not also be manufactured by a different process.*

As the grouping of apparatus, process, and product is an established grouping, three invention categories should be treated together for examination purposes.

In light of the above, withdrawal of the restriction requirement is respectfully requested. Applicant therefore requests that search and examination of claims 1-80 be conducted together as a single group of related inventions.

In compliance with 1.499, should this unity of invention rejection become final, applicants hereby provisionally elect the claims of Group I.

Applicant requests that a timely Notice of Allowance be issued in this case. If any matters exist that preclude issuance of a Notice of Allowance, the examiner is requested to contact the applicant's representative at the number indicated below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge any fees or credit any overpayment, particularly including any fees required under 37 CFR Sections 1.16 and/or 1.17, and any necessary extension of time fees, to deposit Account No. 07-1392.

Respectfully submitted,

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